

HOUSE BILL 1270

By Lynn

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 6, relative to food and food ingredients for
human consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by
deleting § 67-6-228 in its entirety and by substituting instead the following:

Section 67-6-228.

(a)

(1) Notwithstanding any provision of this part to the contrary,
except as otherwise provided in subdivision (a)(2) and (d), the retail sale
of food and food ingredients for human consumption shall be taxed at the
rate of six percent (6%) of the sales price of each single article of food or
food ingredient.

(2) The retail sale of the following food and food ingredients shall
be taxed at the rate of tax levied on the sale of tangible personal property
at retail by the provisions of § 67-6-202:

(A) Candy;

(B) Dietary supplements; and

(C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other
natural or artificial sweeteners in combination with chocolate,
fruits, nuts, or other ingredients or flavorings in the form of bars,

drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(a) A vitamin;

(b) A mineral;

(c) An herb or other botanical;

(d) An amino acid;

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (a)(3)(B)(i)(a)-(e); and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36; and

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. "Prepared food" does not include food that is only sliced, repackaged, or pasteurized.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include the following items, which shall be taxed at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202:

(1) Beer, wine or any other beverage, however designated, that contains alcohol and is regulated pursuant to title 57; or

(2) Cigarettes, cigars or any other product, however designated, that contains tobacco.

(d)

(1) The retail sale of ingredient food and whole food for human consumption shall be taxed at the rate of five percent (5%)

of the sales price of each single article of ingredient food or whole food.

(2) For the purposes of this section:

(A) "Ingredient food" means a common ingredient used in preparing food for human consumption, including, but not limited to, salt, pepper, spices, sugar, and flour; provided that ingredient food does not include any ingredient containing artificial sweeteners, artificial flavors, artificial colors or preservatives, or any combination thereof; and

(B) "Whole food" means untreated food for human consumption, including, but not limited to, fresh, frozen or canned vegetables, fresh, frozen or canned fruit, pure juices, unprocessed meats, nuts, rice, coffee and tea; provided that whole food does not include any food containing artificial sweeteners, artificial flavors, artificial colors or preservatives, or any combination thereof but may contain vitamin additives.

SECTION 2. This act shall take effect at 12:05 a.m. on July 1, 2007, the public welfare requiring it.